

APPEAL NO. 032290
FILED OCTOBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 6, 2003. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on _____; and (2) the claimant had disability from November 22 through December 14, 2002, and again from January 27, 2003, to the present. The appellant (self-insured) appeals these determinations on sufficiency of the evidence grounds, and asserts error in the exclusion of its Exhibit No. 3. The claimant did not file a response.

DECISION

Affirmed.

As stated above, the self-insured asserts that the hearing officer erred by excluding its Exhibit No. 3, which had been timely exchanged. The self-insured offered the exhibit for purposes of impeachment and for the issue of disability. The claimant objected to the admission of Self-Insured's Exhibit No. 3 on the basis of relevancy and essentially agreed that he did not have disability for the corresponding dates contained therein. The hearing officer sustained the claimant's objection. To obtain reversal of a judgment based upon the hearing officer's exclusion of evidence, an appellant must first show that the exclusion was an abuse of discretion, and that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see also Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Applying this standard, we cannot conclude that the hearing officer's exclusion of Self-Insured's Exhibit No. 3 constituted reversible error.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge